

State of California
BOARD OF EQUALIZATION
SALES AND USE TAX REGULATIONS

Regulation 1661. LEASES OF MOBILE TRANSPORTATION EQUIPMENT.

Reference: Sections 6006, 6006.1, 6006.3, 6006.5, 6009, 6010, 6010.1, 6011, 6012, 6016.3, 6023, 6024, 6092.1, 6094, 6352, 6390, 6391, 6407, 6457, Revenue and Taxation Code
Leases Generally, see Regulation 1660.

(a) DEFINITIONS.

(1) "Mobile Transportation Equipment". The term "mobile transportation equipment" includes only equipment for use in transporting persons or property for substantial distances. The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, pilot boats, tugboats and lighters, not including, however, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment.

The following items are specifically excluded from the definition of mobile transportation equipment:

(A) Passenger vehicles as defined in section 465 of the California Vehicle Code:

(B) Trailers and baggage containers designed for hauling by passenger vehicles; and

(C) One-way rental trucks. These vehicles are motor trucks of a kind required to be registered under the Vehicle Code, not exceeding the manufacturer's gross vehicle weight rating of 24,000 pounds, which are principally employed by a person in the rental business in being leased out for short-term periods of not more than thirty-one (31) days to individual customers for one-way or local hauling of personal property of the customers, and which upon acquisition or being employed in this state by the person, are identified to the board by reporting tax measured by rental receipts on a timely return for the first reporting period in which the truck is leased and maintaining records which can be verified by audit of the vehicles as to which such an election has been made.

Upon the leasing of such a truck to a customer, the lessor shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and any taxes which are imposed are measured by the rentals. Once a truck is identified to the board as a one-way rental truck, the election may not be revoked with respect to the equipment as to which it is made. However, failure of the lessor to make such a timely election will cause such vehicles to be classified as mobile transportation equipment.

(2) "Bogie". The term "bogie" means a vehicle consisting of an axle or axles with wheels and tires with a device mounted on its frame to support a container (van body) as an undercarriage. It acts as wheels for and in conjunction with the container (or van body). Bogies are specifically designed to couple under a container temporarily for highway use, being detachable when not required. Bogies may be designed and constructed so as to allow a sliding movement under a container (or van body) to several positions under the container to adjust to desired axle loading.

(3) "Chassis". The term "chassis" means a frame with one or more axles designed to be used in conjunction with and as a temporary support or undercarriage for a container or other van-type box.

The chassis and axle or axles may be designed and constructed so as to allow a sliding movement for extending the chassis to allow the carriage of various length bodies or to allow movement of one or more axles to any given position under the container. When operated as a semitrailer, the front portion of the container and chassis is attached to a motor vehicle or dolly.

(4) "Dolly". The term "dolly" means a vehicle consisting of a tongue, fifth wheel and axle equipped with wheels and tires to be connected to a semitrailer so as to support the front end of the semitrailer, including a portion of the cargo thereon, but which is not permanently attached to the semitrailer.

When coupled to the semitrailer by its fifth wheel (which is mounted on the frame) and to a trailer by the tongue, the semitrailer becomes in effect a "full" trailer. A dolly may also be designed and used as the third or rear axle of a two-axle tractor to act as an additional axle to support a portion of the weight of a towed semitrailer and any load thereon, thus

Regulation 1661. (Continued)

reducing tractor axle loads. Pole, pipe and logging dollies consist of a tongue, bolster and axle or axles equipped with wheels and tires. When connected to a motor vehicle by its tongue, or by the cargo, this type of dolly is used to transport long poles, timbers, logs, pipes or structural materials with the rear end of the cargo resting on the dolly bolster and the front end on the motor vehicle.

(5) "Ships". The term "ships" includes vessels 30 feet or more in length. The term does not include vessels less than 30 feet in length.

(b) APPLICATION OF TAX

(1) With respect to leases of mobile transportation equipment, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment. Accordingly, either the sale of the equipment to the lessor or its use in this state may be subject to tax. For example, if the sale and delivery occur within California, the transaction is subject to sales tax unless the lessor makes a timely election to report his or her tax liability measured by the fair rental value as provided in (b) (2) below. On the other hand, if the sale and delivery occur outside California and the property is purchased for use in California, use tax will apply measured by the purchase price unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce, or the lessor makes a timely election to report use tax liability measured by the fair rental value as provided in (b) (2) below.

If in connection with an assignment of an existing lease of mobile transportation equipment, title to the leased property is transferred to the assignee, the transfer is a sale to the assignee and the assignee is the consumer of the equipment. Application of tax is governed by the rules set forth in this section (b) (1).

(2) If the use of mobile transportation equipment purchased under a resale certificate is limited to leasing the equipment, the purchaser may elect to pay his or her use tax liability measured by the fair rental value if the election is made on or before the due date of a return for the period in which the equipment is first leased. The election must be made by reporting tax measured by the fair rental value on a timely return for that period. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental value, whether the equipment is within or without this state. The election may not be revoked with respect to the equipment as to which it is made. Any separately stated amount collected from a lessee by a lessor electing to report use tax measured by fair rental value under the representation by the lessor that the amount is use tax imposed on the customer must be returned to the customer or paid to the board. A designation by the lessor of a separately stated amount as "use tax", without further explanation, will be regarded as a representation that the amount is use tax imposed on the customer.

This election is available to any purchaser who leases mobile transportation equipment, other than a person exempt from use tax under Revenue and Taxation Code Section 6352, and such purchaser may properly issue a resale certificate for the limited purpose of reporting use tax liability based on fair rental value.

(A) Fair Rental Value. "Fair rental value" means the rentals required by the lease, except where the Board determines the rental receipts are nominal. Fair rental value does not include any payment made by the lessee to reimburse the lessor for the lessor's use tax, whether or not the amount is separately stated, and regardless of how the charge is designated in the lease documentation and invoices. Lump-sum charges to the lessee will be assumed to include reimbursement for the lessor's use tax whether or not any statement to that effect is made to the lessee.

Example: Assuming a 6 percent tax rate, if the invoice to the lessee states "rental \$100, tax reimbursement to the lessor \$6", "rental \$100, sales and use taxes \$6", or similar wording, the fair rental value is \$100. If the invoice to the lessee states "rental \$106" and makes no reference to reimbursement, the fair rental value is \$100 ($\$106 \div 1.06$). Assuming a 6.5 percent tax rate, the fair rental value is \$99.53 ($\$106 \div 1.065$).

Fair rental value includes any deficiency payment required from the lessee on disposition of mobile transportation equipment at the termination of an open-end lease and such payment is subject to tax. Any surplus rentals, however, which are returned to the lessee at the termination of an open-end lease may be deducted from the total fair rental value reported for the period in which the surplus rentals are returned. In the alternative, a refund may be claimed for any tax paid within the applicable statute of limitations period on such surplus rentals.

Fair rental value includes any capitalized cost reduction payment, which is a one-time payment by the lessee at the start of the lease to reduce the lessor's investment and the lessee's rentals. The payment may either be reported for the period in which it became due from the lessee or it may be reported in equal increments over the lease term. On early termination of such a lease, any unreported portion of the capitalized cost reduction payment shall be reported for the period in which termination occurred.

The term "fair rental value" includes any payments required by the lease, including amounts paid for personal property taxes on the leased property, whether assessed directly against the lessee or against the lessor, but do not include amounts paid to the lessor for:

Regulation 1661. (Continued)

1. Collection costs, including attorney's fees, court costs, repossession charges, and storage fees; but tax does apply to any delinquent rental payments, including those collected by court action;
2. Insuring, repairing or refurbishing the leased property following a default;
3. Costs incurred in defending a court action or paying a tort judgment arising out of the lessee's operation of the leased property, or any premiums paid on insurance policies covering such court actions or tort judgments;
4. Costs incurred in disposing of the leased property at expiration or earlier termination of the lease;
5. Late charges and interest thereon for failing to pay the rentals timely;
6. Separately stated optional insurance charges, maintenance or warranty contracts.

(B) Tax Application. Tax applies to fair rental value for all periods during which the mobile transportation equipment is leased even though the lessee may not make the required rental payments. The lessor must pay tax at the rate in effect at the time the equipment is first leased. The tax rate will remain the same for all periods during which the equipment is leased, including the periods during the first lease of the equipment and all periods during any subsequent leases of the equipment.

Tax on fair rental value does not apply either (a) for periods during which the equipment is not leased and is merely held for lease; or (b), for periods after the lessor has formally demanded return of the equipment if the lessee wrongfully retains possession of the property and is not required to make rental payments under the lease. If mobile transportation equipment is sold while subject to an existing lease and the new purchaser elects to pay tax measured by fair rental value, the applicable tax rate during the existing lease and during all subsequent leases is the rate in effect at the time of the sale of the mobile transportation equipment to the new purchaser.

History: Adopted January 6, 1970, effective February 8, 1970.

Amended December 8, 1970, effective January 15, 1971.

Amended December 15, 1971, applicable on and after December 15, 1971.

Amended January 17, 1973, effective March 1, 1973.

Amended December 7, 1978, effective February 18, 1979. Subsection (e)(2) is amended to provide that for periods from 1/1/72 to 1/31/78 the purchaser's use tax liability may not be charged to the lessee as separately stated tax; subsection (g)(1) and (g)(2) are amended to provide that for certain mobile transportation equipment no sales tax or use tax would apply to the rental receipts of the lessor if certain requirements are met.

Amended June 27, 1979, effective August 12, 1979. In (e)(2) adds two sentences stating "Beginning July 1, 1979 . . ."

Amended February 6, 1980, effective March 29, 1980. Added to references, Sections 6092.1, 6243.1, and 6352. In (e)(2) deleted last paragraph and added two new paragraphs. In (f) added second paragraph. In (g) added second paragraph.

Amended February 3, 1983, effective July 3, 1983. Added paragraph (5) to subdivision (b) and renumbered existing subdivision (5) to (6). Also, deleted the last three paragraphs of subdivision (e)(2) and inserted the language relating to the election to report and pay tax on fair rental value by dealers only prior to January 1, 1980 and all lessees of mobile transportation equipment on or after that date; defined "fair rental value"; and explains tax application.

Amended May 9, 1985, effective September 22, 1985. In subdivision (e)(2)(A), adds the definition of "fair rental value" and provides for the exclusion from fair rental value of certain amounts paid to the lessor which do not relate to the actual charge for the possession and use of the property by the lessee under the lease.

Amended March 9, 1994, effective June 22, 1994. Deleted subdivisions (a), (b), (c), (d), (e), (f), (g) and (h) and replaced them with new subdivisions (a) and (b) to explain how a change in the tax rate affects the application of tax to transactions in which lessors of mobile transportation equipment elected to pay use tax measured by fair rental value; deleted obsolete provisions and rearranged the remaining provisions.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.